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Centre for Trade Facilitation and Electronic Business (UN/CEFACT)

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Item 6 of the provisional agenda

**REPORT OF THE UN/CEFACT JOINT LEGAL RAPPORTEUR
TO THE UN/CEFACT PLENARY AND REPORT OF THE WORK
OF THE UN/CEFACT LEGAL WORKING GROUP (LWG) DURING
THE PERIOD APRIL 2001 TO MARCH 2002**

Submitted by the UN/CEFACT Legal Rapporteur

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The present report is submitted to the Centre for discussion and noting.

1 Introduction

This report combines the report from the Legal Working Group (LWG) concerning the activities of the Group during the year between April 2001 and March 2002 and also constitutes the Joint Legal Rapporteur's report to the Plenary for the same period.

2 Reporting Procedures

In order to maintain a close relationship between the LWG and the UN/CEFACT Steering Group (CSG), the Joint Legal Rapporteur attended all meetings of the LWG during the year in the capacity of Vice-chair of that group and as Joint Legal Liaison Rapporteur. The Rapporteur also attended all meetings of the CSG during the same period, reporting to the CSG on behalf of the LWG and giving detailed information concerning its progress with its programme of work and responding to the requirements and requests of the CSG during the period.

3 General position

The general strategic policy of the LWG is, in accordance with its mandate and terms of reference, to focus on practical measures to facilitate international e-commerce trade transactions. Such solutions include contractual processes, (such as Recommendations 26 and 31) and voluntary solutions (such as codes of conduct exemplified in Recommendation 32). Other areas of work include the development of appropriate model legislation and the possibility of the development of international conventions. These latter areas are primarily the responsibility of other bodies such as the United Nations Commission on International Trade Law (UNCITRAL) and the LWG works to support such activities.

During the year, further progress has been made in relation to the LWG's work programme items. Existing items have been advanced and new projects have been added. During the period, meetings were held in Florence, Rotterdam, Lugano and Geneva. Attendance at these meetings was better than in previous periods and additional valuable virtual participation was achieved through the LWG list server with contributions from LWG regional sub-groups in Asia (AFACT LWG) and North America. Further follow-up work has been carried out in relation to Recommendations 26, 31 and 32. In addition, there is a busy programme of ongoing work, as identified further in this report.

4 Detailed work items

4.1 Codes of conduct

At the 2001 Plenary (ECP), Recommendation 32 was passed. This recommendation supported the work carried out by the Electronic Commerce Platform of the Netherlands. The LWG has continued to support the pioneering work carried out by ECP Netherlands in promoting and encouraging the development of voluntary codes of conduct for trading partners in e-commerce commercial transactions. Numerous other countries and international organizations have developed and supported the adoption of such voluntary solutions, nationally, pan-nationally and sectorially.

4.2 Interchange Agreements and Trading Partner Agreements

Recommendations 26 and 31 are practical solutions for the regulation and security of e-commerce transactions using contractual procedures. During the last year, close cooperation has been established with Edifice and RosettaNet, who are working on the development of a further approved form of trading partner agreement. This work complements the principles developed in Recommendation 26. Representatives from Edifice and RosettaNet have attended recent LWG meetings and a joint meeting was held in Lugano kindly hosted by Edifice.

It is hoped that further detailed analysis will permit the LWG to comment formally on the excellent work being carried out by Edifice. A potential future deliverable from the LWG may involve formal endorsement of the Edifice/ RosettaNet deliverables.

4.3 Work with UNCITRAL

As indicated in paragraph 3 above, the LWG is committed to a work programme that encourages all types of solutions to resolve legal barriers to the development of electronic commerce in support of international trade. The second Joint Legal Rapporteur to the LWG is the Legal Rapporteur to UNCITRAL and through this connection there is close awareness of the model law solutions to electronic commerce legal framework being developed by that body. A separate report (TRADE/CEFACT/2002/20) by the second Legal Rapporteur gives details of the current work of UNCITRAL.

4.4 Model Certification Authority terms

The LWG is proceeding with its work regarding the development of Model Certification Authority terms. The previous target completion date for this work was March 2002. However, in common with many other organizations, the speed of progress in the work programme was appreciably affected by the unfortunate events in the United States in September 2001. However, further work has been carried out on this item and also on the associated issue of appropriate criteria for cross-border recognition of electronic signatures. It is hoped that this important work may result in a draft Recommendation for consideration either at the 2003 Plenary or, alternatively, through the inter-sessional approval mechanism.

4.5 Online Dispute Resolution

Drafting work is currently in progress regarding the development of a Recommendation concerning on-line resolution ('ODR') of e-commerce disputes between trading partners engaging in international transactions. In the near future, a revised draft paper will be available for circulation and for consultation. Subject to the results of this consultative process, which will be as comprehensive as possible, it is hoped that a final form of draft Recommendation will be available for submission to the Plenary. This Recommendation is expected to focus on the encouragement of ODR solutions by the modification, where necessary, of appropriate national legislation and the establishment of procedures to encourage such solutions.

5 External Relations

During the year, the Joint Legal Rapporteur attended a number of conferences and made presentations in Switzerland, Belgium, Italy, France, Denmark, Croatia and the United States regarding UN/CEFACT LWG activities. At these events, the work of UN/CEFACT and the particular activities of the LWG were reviewed and publicized. In addition, contact has been maintained with UNCTAD, WTO, WIPO, the ICC and the EU as well as numerous national bodies.

6 Meetings and Participation

The improvement in participation in the LWG referred to earlier in this report does not take away the need for the members of the UN/CEFACT Plenary continually to encourage further participation by e-commerce legal experts.

LWG policy is that, so far as possible, difficulties associated with the cost of international travel and accommodation should not hamper the work of the group or discourage potential attendees. To help with these problems, every effort is made to ensure that all LWG members are kept fully informed via the LWG list server. In addition, as has been previously reported, the LWG has established two associated sub-groups. One is based within the AFACT and in North America. In addition, efforts are presently in hand to develop similar Latin American and African sub-groups.

7 UN/CEFACT restructuring

During the last year, the LWG has, through its liaison with the CSG, participated in the review and proposed restructuring of the UN/CEFACT working groups. It is the case that the role and function of the LWG is not expected to change in any element of principle. Subject, of course, to the decisions to be considered by the Plenary regarding the adoption of the proposed modifications to UN/CEFACT's structure, it is expected that the Group's mandate and terms of reference will merely need to be reviewed to ensure conformity with those of other permanent working groups. The LWG fully endorses and supports the proposals submitted to the Plenary for the revisions to the UN/CEFACT structure which are considered to be essential to allow the effective and efficient development and achievement of the UN/CEFACT objectives.

8 Secretariat

Finally, it is necessary to pay tribute to the excellent assistance received by the LWG from the UN/CEFACT secretariat during the last year. This has undoubtedly significantly contributed to the efficiency of the Group and has, thereby, increased the level activity and potential for the delivery of work items in an effective timescale.
